

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 95-0535 RST  
Sales Tax — Satellite Transmission Services  
For Tax Periods: 1990 through 1993**

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**ISSUES**

**I. Sales Tax — Satellite Transmission Services**

**Authority:** IC 6-2.5-4-6, IC 6-2.5-4-11

Taxpayer protests the proposed assessment of Indiana sales tax on sales of satellite transmission services.

**STATEMENT OF FACTS**

Taxpayer provides the satellite transmission of basic television and pay-per-view movie services for the hotel and lodging industry. Additionally, taxpayer provides satellite distribution support services for the Indiana affiliates of a national broadcasting network. Under this agreement, taxpayer transmits programming of the national network, via satellite, to the network's Indiana affiliates.

**I. Sales Tax — Satellite Transmission Services**

**DISCUSSION**

Audit found that taxpayer's sales of satellite transmission services – to hotels and motels, and to the network's local affiliates – were subject to Indiana gross retail (sales) tax. Taxpayer failed,

however, to collect Indiana sales tax on the sale of these services. Consequently, Audit assessed a tax deficiency.

An excise tax – known as the gross retail, or sales tax – is imposed on retail transactions made in Indiana. (See IC 6-2.5-2-1.) A "retail transaction" is defined as (1) a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, or (2) a transaction that constitutes making a wholesale sale as described in IC 6-2.5-4-2, or (3) a transaction that is described in other sections of IC 6-2.5-4. (See IC 6-2.5-1-2.)

Taxpayer observes that the taxable transactions of a retail merchant – whether selling at wholesale or retail – share one common element, each involves the transfer of tangible personal property. Taxpayer notes that it is selling a service (i.e., the transmission of satellite programming) and not selling tangible personal property. These sales, therefore, cannot represent taxable transactions as defined by either IC 6-2.5-4-1 (selling at retail) or IC 6-2.5-4-2 (wholesale sales).

Taxpayer disagrees with Audit's conclusion that sales of satellite transmission services represent an enumerated taxable *service* activity. (See IC 6-2.5-4-6.) Taxpayer argues that under either the old or new version of IC 6-2.5-4-6, the statute cannot serve as justification for taxation of its sales activities.

Prior to the 1993 amendments, IC 6-2.5-4-6 authorized the taxation of certain telephone services provided by public utilities. To wit:

A person engaged as a public utility is a retail merchant making a retail transaction when the person furnishes local exchange telephone service or intrastate message toll telephone service.

IC 6-2.5-4-6(a).

As taxpayer is not a public utility and taxpayer does not provide telephone services, this version of the statute, from taxpayer's perspective, cannot serve as authority for any of the proposed assessments.

The statute was rewritten – effective July 1, 1993. The amended language authorized taxation of *intrastate telecommunication services*, regardless of provider. While the statute failed to define "intrastate," the statute did include language defining "telecommunication services."

As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added

services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

IC 6-2.5-4-6(a). *As amended by P.L. 71-1993, SEC.5.*

Taxpayer acknowledges that its activities fall within the definition of "telecommunication services." Taxpayer strongly asserts that its telecommunication services are not, however, "intrastate" in nature. Although terminating in-state, the signal originates out-of-state. Absent statutory language to counter the commonly accepted meaning of the word "intrastate," taxpayer argues that its activities can only be characterized as *interstate* telecommunication services – services beyond the reach of IC 6-2.5-4-6.

Taxpayer surmises that the only other possible basis for imposing Indiana's gross retail tax on sales of satellite transmission services could be IC 6-2.5-4-11, which authorizes the taxation of certain cable television services. As IC 6-2.5-4-11(a) instructs:

A person is a retail merchant making a retail transaction when he furnishes local cable television service or intrastate cable television service.

Taxpayer distinguishes its activities from those of cable television service providers. According to taxpayer, the latter have an extensive physical presence in the state – ranging from cable and equipment to actual facilities for program origination. In contrast, taxpayer's activities require only a minimal physical presence – a presence limited to the equipment necessary for reception and distribution of satellite signals.

### **Satellite transmission of basic television and pay-per-view programming**

The Department considers cable television services and satellite broadcast services to be similar. While the amount of property and facilities located within the state necessary to ensure program delivery differ, this difference does not affect the taxable consequences of sales of the respective programming services. The Department finds, therefore, that the provision of television programming services via satellite – from standard fare to pay-per-view programming – represents a taxable sales transaction. (See IC 6-2.5-4-11.)

### **Satellite transmission of network programming to Indiana affiliates**

Taxpayer's satellite transmission of the network's programming to Indiana affiliates, however, does not fall within the scope of IC 6-2.5-4-11. These activities, in this context, are neither similar nor analogous to either the provision of cable television services or the satellite transmission of regular and pay-per-view programming to hotels and motels.

Furthermore, prior to July 1, 1993, IC 6-2.5-4-6 cannot serve as a basis for imposing sales tax; taxpayer is not a public utility. Taxpayer's activities, however, do fall within the scope of the amended IC 6-2.5-4-6. Consequently, the Department finds taxpayer's sales of satellite services to the national network for the transmission of network programming to Indiana affiliates – transmissions occurring after July 1, 1993 – are subject to Indiana's gross retail tax.

### **FINDING**

Taxpayer's protest is sustained only to the extent that sales from satellite transmissions of the network's national programming to its Indiana affiliates – prior to July 1, 1993 – were included in the proposed assessment. Otherwise, taxpayer's protest is denied.